APPENDIX D(2)

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 11]

PART 719—RECONSTITUTION OF FARMS, FARM ALLOTMENT, AND FARM HISTORY AND SOIL BANK BASE ACREAGES

Transfer of Allotment From the Pool

Basis and purpose. This amendment is issued pursuant to section 375(b) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1375(b)) and section 124 of the Soil Bank Act (7 U.S.C. 1812) and interprets and applies section 378 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1378). The purpose of the amendment is to make the procedures for the transfer of allotment from the pool under 7 U.S.C. 1378 more effective in preventing the sale of allotments from the pool or the transfer of allotments from the pool for the benefit of some person other than the displaced owner.

Since applications under 7 U.S.C. 1378 are now pending and many more will be filed in the near future, it is hereby determined that compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (5 U.S.C. 1003) is impracticable and contrary to the public interest and this amendment shall become effective upon publication in the FEDERAL REGISTER.

Section 719.12(d)(2) (23 F.R. 7694) is amended to read as follows:

(2) *Transfer of allotment from the pool.* Upon written application by the displaced owner by August 29, 1961 or within three years after such owner is displaced, whichever

is later, to the county committee of the county in which the farm which is to receive allotment from the pool is located, the county committee shall determine whether the transaction by which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner. The application for transfer shall contain a certification by the applicant that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself. Before an application is acted upon by the county committee the applicant shall personally appear before the county committee after reasonable notice and bring with him all pertinent documents for examination by the committee and answer all pertinent questions bearing on the proposed transfer, unless the State committee determines from facts presented to it on behalf of the applicant that the applicant would be unduly inconvenienced by such an appearance on account of illness or other good cause and an appearance by the applicant before the county committee would serve no useful purpose. If an allotment is transferred hereunder and it is later determined by the county committee that the transfer was obtained by misrepresentation by or on behalf of the applicant the allotment for the farm shall be reduced by the amount of the transfer for each year the transfer purportedly was in effect and if the time for withdrawal from the pool has not expired the amount of the reduction shall be returned to the pool. The action of the county committee in approving or disapproving an application or in reducing the allotment for misrepresentation shall be effective only upon approval of the State committee or its representative and the issuance of an appropriate allotment notice under the applicable commodity regulations. If the county committee

determines that the transaction by which the displaced owner acquired the farm to which the allotment is to be transferred and the proposed transfer is for the bona fide purpose of reestablishing the farming operations of the displaced owner and is not a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner the county committee shall determine the allotment or increase of allotment to be transferred from the pool to such farm. The allotment to be transferred for a commodity shall be no greater than an amount required to establish an allotment comparable with allotments determined for other farms in the same area which are similar except for the past acreage of the commodity, taking into consideration the land, labor and equipment available for the production of the commodity, crop-rotation practices, and the soil and other physical factors affecting the production of the commodity: *Provided, however,* That the acreage transferred from the pool shall not exceed the allotment most recently established for the farm acquired from the applicant and placed in the pool. When all or a part of the allotment placed in the pool is transferred and used to establish or increase the allotment for other farms owned or purchased by the displaced owner, all or the proportionate part of the past acreage history for the farm from which the owner was displaced shall be transferred to, and considered for purposes of future allotments, to have been planted on the farm for which an allotment is established or increased under this section. If only a part of the available allotment is transferred from the pool, the remaining part of the allotment and past acreage history shall remain in the pool for transfer to other farms of the displaced owner until all such allotment acreage has been transferred or until the period of eligibility for establishing or increasing allotments under this section has expired.

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375; sec. 124, 70 Stat. 198; 7 U.S.C. 1812 interprets and applies sec. 378,

72 Stat. 988, as amended; 7 U.S.C. 1812 interprets and applies sec. 378, 72 Stat. 988, as amended; 7 U.S.C. 1378)

Done at Washington, D. C., this 14th day of February, 1961.

H. D. GODFREY,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 61-1452; Filed, Feb. 16, 1961; 8:48 a.m.]

APPENDIX D(3)

APPENDIX D(3) [7 C.F.R. § 719.12]

§ 719.12 Pooling of farm acreage allotments where the farm owner is displaced by a Federal, State, or other agency having the right of eminent domain.

(a) *Applicability*—(1) *General limitation.* This section shall not be applicable to a farm acquired by a Federal, State, or other agency having the right of eminent domain (referred to in this section as "agency") if the allotment next established after the owner is displaced for such farm would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm or due to a false acreage report. This section also shall not be applicable to any farm from which the owner was displaced:

(i) Prior to 1950, in the case of upland cotton, extra long staple cotton, tobacco, and peanuts;

(ii) Prior to 1954, in the case of wheat and corn; and

(iii) Prior to 1955, in the case of rice.

(2) *Special limitations.* This section shall not be applicable if any of the following conditions exist at the time the county committee considers for approval an application filed pursuant to paragraph (d) (2) of this section:

(i) There remains unpaid any marketing quota penalty due with respect to the marketing of the commodity from the farm acquired by an agency or by the owner of the farm so acquired;

(ii) Any of the commodity produced on the farm acquired by an agency has not been accounted for as required under applicable commodity regulations;

(iii) The county in which the farm is located for which the owner applies for transfer of allotment from the pool has no farm acreage allotments currently in effect for the commodity for which application is made, and the county

committee determines that farms in such county are not suitable for the production of such commodity; or

(iv) The farm owner applying for a transfer of acreage from the pool previously had an allotment for the commodity established or increased under superseded related transfer of allotment provisions of commodity regulations because of displacement from the farm by an agency acquisition.

(b) *Related transfer of allotment provisions of commodity regulations are superseded.* This section supersedes related transfer of allotment provisions of commodity regulations, but any allotments established or increased under such provisions shall remain in effect except that any such allotments established or increased in the period August 28, 1958, to the effective date of this section shall be reviewed and revised as may be required to conform to the provisions of this section.

(c) *Where agency will continue production of an allotment crop.* If an agency (1) acquires a farm for the sole purpose of continuing production of an allotment crop, (2) has authority to acquire a farm for such purpose under eminent domain, and (3) files a written notice with the county committee of a county in which the farm is located within 30 days following the date of acquisition or December 31, 1958, whichever is later, designating the allotment crops to be produced on the acquired farm, the acreage allotment established for such farm for each allotment crop for which production will be continued shall remain effective and not pooled and the allotments for such farm for subsequent years shall be determined in accordance with applicable commodity regulations.

[Paragraph (c) amended, Amdt. 7, 25 F.R. 2881, Apr. 6, 1960]

(d) *Where agency will not continue production of allotment crops*—(1) *Allotment pool.* If an agency acquires

a farm and no notice is filed by the agency designating a particular allotment crop as one to be produced on the acquired farm pursuant to paragraph (c) of this section, the allotment for such commodity shall be placed in an allotment pool in accordance with subdivisions (i) or (ii) of this subparagraph. The allotment placed in a pool in accordance with these regulations shall be available only for use in providing equitable allotments for other farms owned or purchased by the displaced owner. During the period of eligibility for establishing or increasing allotments for a displaced owner under this section, acreage allotments shall be established for the agency-acquired farm in accordance with applicable commodity regulations for other farms, and for purposes of establishing future allotments, such allotments shall be considered to have been fully planted.

(i) *Owners displaced prior to August 28, 1958.* An allotment which is eligible for pooling by an owner displaced prior to August 28, 1958, under the provisions of paragraphs (a), (b), and (c) of this section, shall be placed in an allotment pool if the displaced owner timely files the prescribed application form designating the other farm(s) owned for which a transfer of allotment is being requested for the succeeding year. Such application for the pooling of an allotment shall become active as of the date of filing with the county committee; however, an application must be filed on or before May 1 in the case of wheat and on or before November 1 in the case of cotton, peanuts, rice, and tobacco for the transfer to become effective for the crop harvested in the succeeding year, except that if the county committee has actual knowledge of the displacement prior to the final date for filing, the allotment shall be transferred to the pool as if the application were timely filed. The pooling and transfer provisions of this subdivision shall not be applicable after August 28, 1961.

(ii) *Owners displaced on or after August 28, 1958.* The allotment(s) eligible for pooling by an owner displaced on

or after August 28, 1958, shall be placed in an allotment pool upon the displacement of the owner.

(2) *Transfer of allotment from the pool.* Upon application by the displaced owner in writing to the county committee of the county in which the farm which is to receive allotment from the pool is located before August 29, 1961, or within three years after such owner is displaced, whichever is later, the county committee shall determine an allotment or increase of allotment to be transferred from the pool for such farm. The allotment to be transferred for a commodity shall be no greater than an amount required to establish an allotment comparable with allotments determined for other farms in the same area which are similar except for the past acreage of the commodity, taking into consideration the land, labor and equipment available for the production of the commodity, crop-rotation practices, and the soil and other physical factors affecting the production of the commodity: *Provided, however,* That the acreage transferred from the pool shall not exceed the allotment most recently established for the farm acquired from the applicant and placed in the pool. When all or a part of the allotment placed in the pool is transferred and used to establish or increase the allotment for other farms owned or purchased by the displaced owner, all or the proportionate part of the past acreage history for the farm from which the owner was displaced shall be transferred to, and considered for purposes of future allotments, to have been planted on the farm for which an allotment is established or increased under this section. If only a part of the available allotment is transferred from the pool, the remaining part of the allotment and past acreage history shall remain in the pool for transfer to other farms of the displaced owner until all such allotment acreage has been transferred or until the period of eligibility for establishing or increasing allotments under this section has expired.

(3) *Notice of displacement.* The owner of a farm acquired by an agency or the agency acquiring the farm

should notify the county committee within thirty days after the date of such acquisition of the farm of the expected date of displacement of the owner from such agency-acquired farm. Any owner who voluntarily relinquishes possession of land subsequent to its acquisition by an agency but prior to actual displacement shall be considered as having been displaced as of the date he voluntarily relinquished the land.

(4) *Date of displacement and leasing acquired land.* The term "date of displacement" with respect to any commodity shall be the date the owner voluntarily relinquishes his right to produce another crop of the commodity on the acquired farm or the date he is legally displaced. Legal displacement occurs when the displaced owner no longer retains the right to possession of the land on the acquired farm as owner or under a lease with the acquiring agency which follows immediately after his possession as owner: *Provided,* That if a former owner has been displaced prior to April 9, 1960, and (i) such former owner enters into a lease with respect to all or part of the land formerly owned by him with the acquiring agency prior to April 9, 1962, (ii) none of the allotment pooled for the acquired farm has been transferred from the allotment pool, and (iii) the former owner files a copy of the lease with the county office of the county in which the acquired farm is located as soon as practicable after execution but in any event prior to April 9, 1962, displacement with respect to the formerly owned land covered by such lease shall be deemed not to have occurred. In cases covered by this proviso, the pooled allotment or portion thereof, as applicable, shall be retransferred from the allotment pool to the acquired farm. The term "lease" as used herein means written leases and other written operating agreements.

(e) *Where only part of a farm is acquired by an agency or only part of an acquired farm is leased by the former owner.* Where only part of a farm is acquired by an agency or only part of an acquired farm is leased by the

former owner, that part of the farm which is acquired by an agency or which is acquired and then leased from the acquiring agency by the former owner and that part of the farm which is not so acquired or leased shall be constituted separately in accordance with §§ 719.1 to 719.11: *Provided, however,* That no reconstitution shall be made in any case where the cropland acquired by an agency for non-farming purposes is less than fifteen percent of the total cropland on the farm, in which case, that portion of the allotment, history acreages, and other pertinent data attributable to that part of the farm so acquired shall be transferred to that part of the farm not so acquired. This fifteen percent provision shall not apply to the leasing of acquired land by the former owner.

[Paragraph (e) amended, Amdt. 8, 25 F.R. 4129, May 10, 1960]

(f) *Procedure in the event of death of owner or joint ownership.* The owner of a farm acquired by an agency may, at any time before or after such acquisition, notify the county committee in writing of his designation of a beneficiary to make application for transfer of allotment to a farm owned by the beneficiary under paragraph (d)(2) of this section in the event of death of the owner prior to a transfer of allotment thereunder and after acquisition by the agency. Such beneficiary shall be limited to the owner's surviving spouse, mother, father, brothers, sisters, or children. The owner may change his designation of beneficiary at any time by giving written notice to the county committee. In case of death of a displaced owner, who owns or has acquired another farm, prior to application for transfer of allotment under paragraph (d)(2) of this section and where no designation of beneficiary was made by the owner under this paragraph, application may be made by the person to succeeds to the owner's interest by reason of the owner's death in any such farm owned by such deceased owner at the time of his death.

Where a farm acquired by an agency is jointly owned, each joint owner may apply for transfer of allotment to the extent of and in proportion to such joint owner's interest in such agency-acquired farm.

[Amdt. 1, 23 F.R. 7693, Oct. 4, 1958, as amended by Amdt. 4, 24 F.R. 2643, Apr. 7, 1959]

CODIFICATION: Paragraph (d) was amended as follows:

1. Subparagraph (1)(i) was amended, Amdt. 7, 25 F.R. 2881, Apr. 6, 1960.

2. Subparagraph (4) was added, Amdt. 5, 25 F.R. 1069, Feb. 6, 1960, and amended by Amdt. 9, 25 F.R. 5445, June 17, 1960.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 687

FRED CHANDLER, SR., ET AL., PETITIONERS

v.

W. LEWIS DAVID, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1)[1] is reported at 350 F. 2d 669. The opinion of the district court (Pet. App. A21) is reported at 219 F. Supp. 801.

JURISDICTION

The judgment of the court of appeals was entered on July 28, 1965 (Pet. App. A19). The petition for a writ of certiorari was filed on October 21, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "Pet. App." references are to the separately bound appendix to the petition.

796-337—65

QUESTION PRESENTED

Whether the regulation promulgated by the Secretary of Agriculture in implementation of 7 U.S.C. 1378(a) is valid.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. 1281, *et seq.*, and of the regulations promulgated by the Secretary of Agriculture in implementation thereof, 7 C.F.R. 719.12, are set forth in Pet. App. A117–A131.

STATEMENT

In order to limit the supply of cotton, the Agricultural Adjustment Act of 1938 provides for the determination and enforcement of annual acreage allotments (*i.e.*, quotas) for the nation, and for apportioning those allotments among States, counties and individual farms. 7 U.S.C. 1341–1350. Under this scheme, acreage allotments are assigned and pertain to individual farms—not individual farmers (see 7 U.S.C. 1344 (f)); with minor exceptions, the Act does not authorize the transfer of a farm's allotment save by transfer of the land to which the allotment is assigned. One such exception is the subject of this case: Under 7 U.S.C. 1378(a), if the land to which an allotment has been assigned is taken by eminent domain, the allotment is placed in an "allotment pool," where it is available "only for use in providing allotments for other farms owned by the owner so displaced."

The Agricultural Adjustment Act authorizes the Secretary of Agriculture to "prescribe such regula-

tions as are necessary" for its enforcement. 7 U.S.C. 1375(b). Pursuant to this authority, on February 14, 1961, the Administrator of the Commodity Stabilization Service promulgated Amendment 11 to 7 C.F.R. 719.12 (Pet. App. A121),[2] prescribing the procedure for, and various limitations upon, the withdrawal of allotments from the pool. Amendment 11—the regulation here challenged—recites that its purpose is to make "the procedures for the transfer of allotment from the pool under 7 U.S.C. 1378 more effective in preventing the sale of allotments from the pool or the transfer of allotments from the pool for the benefit of some person other than the displaced owner." To that end, it requires the county committee to determine (Pet. App. A122)

> * * * whether the transaction by which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner.

To facilitate that determination, the regulation requires that an application for transfer contain a certification by the applicant

> * * * that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself.

[2] The substance of this regulation is now incorporated in 7 CFR 719.11(f) (1964).

The regulation further requires that the applicant appear before the county committee to answer pertinent questions and produce for inspection all pertinent documents. Finally, it provides that where the county committee authorizes the transfer of an allotment and it is later discovered that the transfer was obtained by misrepresentation, the allotment shall be returned to the pool.

Petitioners Fred Chandler, Sr., and Fred Chandler, Jr., in 1960 owned land in Culberson County, Texas, suitable for cotton farming but for which they had no cotton acreage allotments. The Chandlers sought out and entered into negotiations with fifteen displaced farmers (fourteen of whom are also petitioners) whose farms in Oklahoma had been condemned by the Department of the Interior in 1958 and who, accordingly, had acreage allotments in the eminent domain pool. As a result of these negotiations the Chandlers and the displaced farmers entered into a sale and lease-back agreement under which the Chandlers conveyed to each farmer sufficient land in Culberson County to support that farmer's pooled allotment, and the farmer, in return, assumed an indebtedness of $35 per acre (which the Chandlers owed their grantors), agreed to pay clearing costs of $20 per acre, and leased the land back to the Chandlers for a twenty-year term at a total rental of $100 to $125 per acre.

The displaced farmers applied for the transfer of their pooled acreage allotments to the Texas farms (R. 46, 613), and their applications were approved by the county and State ASC committees (R. 46, 534).

But subsequent investigation revealed that the displaced farmers and the Chandlers had misrepresented the purpose of the transfers; that "[t]he transactions by which the applicants obtained deeds to the farms in question were not for the purpose of re-establishing the farming operations of the applicants as displaced owners but were schemes and devices to sell the allotments and to transfer the allotments for the benefit of Fred Chandler, Sr., and Fred Chandler, Jr." (R. 620).[3] Accordingly, the transfers were cancelled (R. 47–48). Petitioners brought this action against the responsible ASC officials challenging the cancellation. The district court held that Amendment 11 was valid and was properly applied to cancel the transfers. The court of appeals affirmed.

ARGUMENT

Petitioners do not now contend that the transfers in question complied with the requirements of Amendment 11. The only question, accordingly, is whether the regulation is valid. We submit that the court below was clearly correct in concluding that it is. The only other court of appeals to have considered the question reached the same conclusion. *Morrow* v. *Clayton,* 326 F. 2d 36 (C.A. 10). Further review is not warranted.

An acreage allotment runs with the land and cannot, in general, be transferred apart from a transfer of the land to which it pertains. Where, however, a farmer

[3] The evidence in support of this conclusion is summarized in the court of appeals' opinion. See Pet. App. A15–A17.